

# 6

## CONFIDENTIALITY

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# 6

## CONFIDENTIALITY

### 6.1 Legal basis

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The legal basis for this chapter is [§ 63.2-104](#) of the Code of Virginia, the Virginia Freedom of Information Act ([§ 2.2-3700](#) et seq. of the Code of Virginia), the Government Data Collection and Dissemination Practices Act ([§ 2.2-3800](#) of the Code of Virginia), [§ 32.1-127.1:03](#) of the Code of Virginia, and by regulation promulgated the State Board of Social Services. Throughout this chapter, text that appears indented with a blue, vertical line denotes verbatim material from the Code of Virginia and/or the Department's Regulations [22 VAC 40-910](#), General Provisions for Maintaining and Disclosing Confidential Information of Public Assistance, Child Support Enforcement and Social Services Records.

([§ 63.2-104](#) of the Code of Virginia). The records, information and statistical registries of the department, local departments and of all child-welfare agencies concerning social services to or on behalf of individuals shall be confidential information, provided that the commissioner, the board and their agents shall have access to such records, information and statistical registries, and that such records, information and statistical registries may be disclosed to any person having a legitimate interest in accordance with state and federal law and regulation.

### 6.2 Definitions

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The following words and terms are defined in state regulation ([22 VAC 40-910-10](#)). When used in this chapter, they shall have the following meaning, unless the context clearly indicates otherwise:

<u>Term</u>	<u>Definition</u>
<b>Agency</b>	A local department of social services (LDSS).

<b><u>Term</u></b>	<b><u>Definition</u></b>
<b>Agent</b>	Any individual authorized to act on behalf of or under the direction of the commissioner of the Virginia Department of Social Services (VDSS) or State Board of Social Services for the sole purpose of accessing confidential client records in the administration of public assistance, child support enforcement, or social services programs.
<b>Client</b>	Any applicant for or recipient of public assistance or social services or any individual about whom the child support enforcement division maintains information.
<b>Client Record or Client Information</b>	Any identifying or nonidentifying information, including information stored in computer data banks or computer files, relating to a client.
<b>Department</b>	The Virginia Department of Social Services (VDSS).
<b>Provider</b>	Any person, agency, or organization providing public assistance, child support enforcement services, or social services through a contract or an agreement with the department or agency.
<b>Research</b>	A systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to general knowledge, including research for the development of new knowledge or techniques that would be useful in the administration of public assistance, child support enforcement, or social services programs.
<b>Social Services Program</b>	Foster care, adoption, adoption assistance, adult services, adult protective services, child protective services, domestic violence services, family preservation, or any other services program implemented in accordance with regulations promulgated by the State Board of Social Services.

### 6.3 Ownership of client records

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([22 VAC 40-910-20](#)). 1. Client records are the property of the department or agency. Employees and agents of the department or agency must protect and preserve such records from dissemination except as provided herein.

2. Only authorized employees and agents may remove client records from the department or agency's premises.

3. The department and agency shall destroy client records pursuant to records retention schedules consistent with federal and state regulations.

## 6.4 Virginia Freedom of Information Act

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The Virginia Freedom of Information Act (FOIA) (§ [2.2-3700 et seq.](#) of the Code of Virginia) ensures the people of the Commonwealth ready access to records in the custody of public officials and free entry to meetings of public bodies wherein the business of the people is being conducted. The affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government.

(§ [63.2-104](#) of the Code of Virginia). If a request for a record or information concerning applicants for and recipients of social services is made to the department or a local department by a person who does not have a legitimate interest, the commissioner or local director shall not provide the record or information unless permitted by state or federal law or regulation.

Record requests can be complex and it is recommended that the LDSS work with their attorney when responding to FOIA requests. Even though an individual may request information pursuant to Virginia FOIA, the LDSS may not be able to disclose all information requested. However, all FOIA requests require a response which could include:

- The record; or
- A written explanation of why the requested records are not available or may not be released, including a citation of §§ [63.2-104](#) and [2.2-3705.5 14](#) of the Code of Virginia and any other specific regulations that may apply.

Responses to a FOIA request shall occur **within five (5) working days** of the receipt of the request. Failure to respond timely to a FOIA request is considered a denial of the request and violation of FOIA.

The [DSS public website](#) contains information about Virginia FOIA which may be helpful to the public and to the LDSS.

## 6.5 Intra-department disclosures

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([22 VAC 40-910-100](#)). The Commissioner of the Virginia Department of Social Services, the State Board of Social Services and their agents shall have access to all social services client records pursuant to § [63.2-104](#) of the code of Virginia.

([22 VAC 40-910-20](#)). The Commissioner of the Virginia Department of Social Services, the State Board of Social Services and their agents do not have to obtain consent from the client to obtain or review client records

Information may be exchanged between eligibility and service workers in the LDSS in pursuance of their official duties. Under no circumstances shall a service worker withhold information from the eligibility staff which may affect an individual's eligibility for assistance.

## 6.6 Inter-department disclosures

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The LDSS may furnish information regarding an individual to other local social service agencies without a release from the individual when the disclosure is for purposes directly related to the administration of the programs.

## 6.7 Government Data Collection and Dissemination Practice Act

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Government Data Collection and Dissemination Practices Act ensures safeguards for personal privacy by record keeping agencies. The following principles of information practice have been established to ensure safeguards for personal privacy:

- ([§ 2.2-3800](#) of the Code of Virginia). 1. There shall be no personal information system whose existence is secret.
2. Information shall not be collected unless the need for it has been clearly established in advance.
  3. Information shall be appropriate and relevant to the purpose for which it has been collected.
  4. Information shall not be obtained by fraudulent or unfair means.
  5. Information shall not be used unless it is accurate and current.
  6. There shall be a prescribed procedure for an individual to learn the purpose for which information has been recorded and particulars about its use and dissemination.
  7. There shall be a clearly prescribed and uncomplicated procedure for an individual to correct, erase or amend inaccurate, obsolete or irrelevant information.
  8. Any agency holding personal information shall assure its reliability and take precautions to prevent its misuse.
  9. There shall be a clearly prescribed procedure to prevent personal information collected for one purpose from being used for another purpose.

10. The Commonwealth or any agency or political subdivision thereof shall not collect personal information except as explicitly or implicitly authorized by law

## 6.8 Disclosure of information without an individual's consent

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([22 VAC 40-910-20](#)). Client records may be released without the client's written permission under the following conditions:

- a. A court of competent jurisdiction has ordered the production of client records and the department, agency or provider does not have sufficient time to notify the client or legally responsible person before responding to the order.
- b. For research purposes as provided in [22 VAC 40-910-50](#).

The Commissioner of the Virginia Department of Social Services, the State Board of Social Services and their agents shall have the discretion to release nonidentifying statistical information. A client's written permission is not required in order to release nonidentifying statistical information.

The Commissioner of the Virginia Department of Social Services, the State Board of Social Services and their agents do not have to obtain consent from the client to obtain or review client records.

## 6.9 Disclosure to outside sources/obtaining information from outside sources

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([22 VAC 40-910-100](#)). Social services client records must be confidential and can only be released to persons having a legitimate interest in accordance with federal and state laws and regulations pursuant to § [63.2-104](#) of the Code of Virginia. Section [63.2-104](#) of the Code of Virginia does not apply to the disclosure of adoption records, reports and information. The disclosure of adoption records, reports and information is governed by § [63.2-1246](#) of the Code of Virginia.

With certain exceptions found in the Adult Services/APS program chapters, an individual or his or her legal authorized representative shall give written permission before the individual's information may be given to a person or LDSS or obtained from other sources.

## 6.10 Consent process

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([22 VAC 40-910-20](#)). As part of the application process for public assistance or social services, the client or legally responsible person must be informed of the need to consent to a third-party release of client information necessary for verifying his eligibility or information provided. Whenever a person or organization that is not performing one or more of the

functions delineated in [22 VAC 40-910-80 C](#) or does not have a legitimate interest pursuant to [22 VAC 40-910-100](#) requests client information, the person or organization must obtain written permission from the client or the legally responsible person for the release of the client information unless one of the conditions delineated in this subsection exists. A client's authorization for release of client information obtained by the department, agency or provider also satisfies this requirement.

The Consent to Exchange Information form is recommended for use when several agencies are involved in providing services to the same family or individual. The use of this form does not change any state or federal laws regarding confidentiality or supersede current program policy regarding the type of information that may be released. Under a memorandum of understanding, all human services agencies are mandated to accept a properly completed Consent to Exchange Information form without requiring an individual or his or her representative to complete another release form. The [Consent to Exchange Information form and instructions](#) are available on the DSS internal website.

## 6.11 Client's right to access client information

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([22 VAC 40-910-60](#)). Any client has the right to obtain their client record upon written or verbal request. The client must be permitted to review or obtain a copy of his client record with the following exceptions:

1. Information that the department, agency or provider is required to keep confidential pursuant to federal and state laws or regulations.
2. Information that the department, agency or provider may withhold from the client pursuant to the Freedom of Information Act (§ [2.2-3700](#) et seq. of the Code of Virginia).
3. Information that would breach another individual's right to confidentiality. When the material requested includes confidential client information about individuals other than the client, the parts of the client record relating to other individuals will be redacted.

### 6.11.1 Access rules

The individual, the individual's guardian and/or guardian ad litem, and the individual's authorized representative shall be accorded access to all eligibility and service material contained in LDSS files except for mental health records under certain conditions. An individual's representative is anyone designated to act in the individual's interest. The individual or the representative shall be required to furnish proper identification. A proper release of information, including those not required to be notarized, shall be obtained. The service worker shall verify the representative's authorization either by viewing a guardian certification, court order, notarized statement from the individual, or by speaking directly to the individual.

### 6.11.2 Exceptions

An exception to the individual's right to see his or her own records is in the case of mental health records, including psychiatric and psychological examination reports. These records may not be personally reviewed by the individual when the treating physician has made a written statement that, in his or her opinion, a review of such records by the individual would be injurious to his or her physical or mental health or well-being.

## 6.12 Rights of data subject

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The Government Data Collection and Dissemination Practices Act provides certain rights to all individuals for whom an LDSS maintains a case record.

(§ [2.2-3806](#) of the Code of Virginia). A. Any agency maintaining personal information shall:

1. Inform an individual who is asked to supply personal information about himself whether he is legally required, or may refuse, to supply the information requested, and also of any specific consequences that are known to the agency of providing or not providing the information.
2. Give notice to a data subject of the possible dissemination of part or all of this information to another agency, nongovernmental organization or system not having regular access authority, and indicate the use for which it is intended, and the specific consequences for the individual, which are known to the agency, of providing or not providing the information. However documented permission for dissemination in the hands of the other agency or organization shall satisfy the requirement of this subdivision. The notice may be given on applications or other data collection forms prepared by data subjects.
3. Upon request and proper identification of any data subject, or of his authorized agent, grant the data subject or agent the right to inspect, in a form comprehensible to him:
  - a. All personal information about that data subject except as provided in subdivision 1 of § [2.2-3705.1](#), subdivision 1 of § [2.2-3705.4](#), and subdivision 1 of § [2.2-3705.5](#).
  - b. The nature of the sources of the information.
  - c. The names of recipients, other than those with regular access authority, of personal information about the data subject including the identity of all persons and organizations involved and their relationship to the system when not having regular access authority, except that if the recipient has obtained the information as part of an ongoing criminal investigation such that disclosure of the investigation would jeopardize law-enforcement action, then no disclosure of such access shall be made to the data subject.

4. Comply with the following minimum conditions of disclosure to data subjects:

a. An agency shall make disclosures to data subjects required under this chapter, during normal business hours, in accordance with the procedures set forth in subsections B and C of [§ 2.2-3704](#) for responding to requests under the Virginia Freedom of Information Act ([§ 2.2-3700](#) et seq.) or within a time period as may be mutually agreed upon by the agency and the data subject.

b. The disclosures to data subjects required under this chapter shall be made (i) in person, if he appears in person and furnishes proper identification, or (ii) by mail, if he has made a written request, with proper identification. Copies of the documents containing the personal information sought by a data subject shall be furnished to him or his representative at reasonable charges for document search and duplication in accordance with subsection F of [§ 2.2-3704](#).

c. The data subject shall be permitted to be accompanied by a person of his choosing, who shall furnish reasonable identification. An agency may require the data subject to furnish a written statement granting the agency permission to discuss the individual's file in such person's presence.

5. If the data subject gives notice that he wishes to challenge, correct, or explain information about him in the information system, the following minimum procedures shall be followed:

a. The agency maintaining the information system shall investigate, and record the current status of that personal information.

b. If, after such investigation, the information is found to be incomplete, inaccurate, not pertinent, not timely, or not necessary to be retained, it shall be promptly corrected or purged.

c. If the investigation does not resolve the dispute, the data subject may file a statement of not more than 200 words setting forth his position.

d. Whenever a statement of dispute is filed, the agency maintaining the information system shall supply any previous recipient with a copy of the statement and, in any subsequent dissemination or use of the information in question, clearly note that it is disputed and supply the statement of the data subject along with the information.

e. The agency maintaining the information system shall clearly and conspicuously disclose to the data subject his rights to make such a request.

f. Following any correction or purging of personal information the agency shall furnish to past recipients notification that the item has been purged or corrected whose receipt shall be acknowledged

### 6.12.1 Informing an individual

Whenever an individual requests an explanation of or challenges the accuracy of information contained in LDSS records, he or she shall be fully informed of the above noted procedure.

The worker should be aware of the individual's right to privacy and should limit information to that which is essential in determining eligibility and providing services. Unless privacy or policy regulations require collateral investigation and collection of information, all information needed should be secured from the individual whenever possible.

To ensure that an individual understands his or her rights, the worker shall read and discuss the consent forms with the individual upon initial contact and at subsequent times when appropriate.

## 6.13 Judicial proceedings

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In the event a subpoena is issued for a case record or for any LDSS representative to testify in connection with an investigation or proceeding not directly related to the administration of a public assistance program, the local director shall immediately notify the LDSS attorney. When appearing in court, the LDSS representative who is subpoenaed to testify or submit records shall advise the court of the federal and state laws and regulations pertaining to confidentiality and request that the court not require disclosure. If the court orders that information or records be disclosed, the LDSS representative shall comply with the order.

## 6.14 Penalties for unlawful use or disclosure of information

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The service worker should contact his or her supervisor if there are any concerns about releasing confidential information.

### 6.14.1 Injunctive relief; civil penalty; attorneys' fees

(§ [2.2-3809](#) of the Code of Virginia). Any aggrieved person may institute a proceeding for injunction or mandamus against any person or agency that has engaged, is engaged, or is about to engage in any acts or practices in violation of the provisions of this chapter. The proceeding shall be brought in the district or circuit court of any county or city where the aggrieved person resides or where the agency made defendant has a place of business.

In the case of any successful proceeding by an aggrieved party, the agency enjoined or made subject to a writ of mandamus by the court shall be liable for the costs of the action together with reasonable attorneys' fees as determined by the court.

In addition, if the court finds that a violation of subsection A of § [2.2-3808](#) was willfully and knowingly made by a specific public officer, appointee, or employee of any agency, the court may impose upon such individual a civil penalty of not less than \$250 nor more than \$1,000, which amount shall be paid into the State Literary Fund. For a second or subsequent violation, such civil penalty shall be not less than \$1,000 nor more than \$2,500. For a violation of subsection A of § [2.2-3808](#) by any agency, the court may impose a civil penalty of not less than \$250 nor more than \$1,000, which amount shall be paid into the State Literary Fund. For a second or subsequent violation, such civil penalty shall be not less than \$1,000 nor more than \$2,500.

#### **6.14.2 Confidential records and information concerning social services; penalty**

(§ [63.2-104](#) of the Code of Virginia). It shall be unlawful for any officer, agent or employee of any child-welfare agency; for the Commissioner, the State Board or their agents or employees; for any person who has held any such position; and for any other person to whom any such record or information is disclosed to disclose, directly or indirectly, any such confidential record or information, except as herein provided or pursuant to § [63.2-105](#). Every violation of this section shall constitute a Class 1 misdemeanor.

## 6.15 Appendix A: Forms

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The following forms may be used to address confidentiality issues in Adult Services and Adult Protective Services cases. These forms are located on the [Adult Services forms page](#) of the DSS internal website.

### **Assurance of Confidentiality**

This form is used to document requests for information on an individual and also to document appropriate assurances that the LDSS requesting the information will keep the information confidential.

### **Consent to Exchange Information**

This form can be used to assist the LDSS in obtaining information needed from other agencies to determine an individual's eligibility for services or benefits.

### **Disclosure Log**

This form may be used to list agencies that have received information from an LDSS about an individual.

### **Interagency Consent to Release Confidential Information for Alcohol or Drug Patients**

This form can be used to request information from or send information to a substance abuse program.